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BEFORE THE ARIZONA CORPORATION COMMISSION

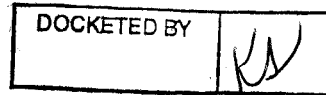
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Arizona Corporation Commission

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IN THE MATTER OF THE GENERIC  
PROCEEDINGS CONCERNING ELECTRIC  
RESTRUCTURING ISSUES

Docket No. E-00000A-02-0051

IN THE MATTER OF ARIZONA PUBLIC  
SERVICE COMPANY'S REQUEST FOR A  
VARIANCE OF CERTAIN REQUIREMENTS OF  
A.A.C. R14-2-1606

Docket No. E-01345A-01-0822

IN THE MATTER OF THE GENERIC  
PROCEEDING CONCERNING THE ARIZONA  
INDEPENDENT SCHEDULING  
ADMINISTRATOR

Docket No. E-00000A-01-0630

IN THE MATTER OF TUCSON ELECTRIC  
POWER COMPANY'S APPLICATION FOR A  
VARIANCE OF CERTAIN ELECTRIC  
COMPETITION RULES COMPLIANCE DATES

Docket No. E-01933A-02-0069

**REQUEST FOR PROCEDURAL  
ORDER AND RESPONSE TO TEP'S  
ACTION FOR DECLARATORY  
ORDER**

The Arizona Corporation Commission Staff ("Staff") hereby requests that the Commission deny Tucson Electric Power Company's Motion for Declaratory Order, filed on May 4, 2005. In the alternative, Staff requests that the Commission order TEP to file prefiled testimony in support of its Motion. Staff also requests that the Commission modify the procedural order that governs TEP's pending rate case, Docket No. E-01933A-04-0408, to allow an indefinite continuance in that case. A continuance is desirable to allow Staff and other interested parties to avoid preparing and filing testimony that may be mooted by TEP's supplemental filings.

1 **I. TEP'S MOTION FOR DECLARATORY ORDER SHOULD BE DENIED.**

2 In its May 4<sup>th</sup> filing, TEP asks the Commission to clarify its intentions for the post-2008  
3 ratemaking treatment of TEP's generation services. (TEP's Mot. for Dec. Ord. at 4). Specifically,  
4 TEP's Motion seeks to determine whether the Commission will "adhere to the TEP 1999 Settlement  
5 Agreement's foundational premise" that TEP's post 2008 generation rates will be determined "based  
6 upon the Market Generation Credit formula." (TEP's Mot. Dec. Ord. at 5). Contrary to TEP's  
7 assertions, TEP's 1999 settlement agreement does not appear to be based upon such a "foundational  
8 premise."

9 TEP's settlement agreement required TEP to transfer its generation assets to a subsidiary on  
10 or before December 31, 2002. (Settlement Agreement at 7). After the transfer, TEP would have been  
11 required to obtain generation to serve its standard offer customers from the wholesale market in  
12 accordance with the Commission's electric competition rules. (Settlement Agreement at 7-8). The  
13 Settlement Agreement is silent as to how the Commission was to set standard offer rates after 2008.  
14 Given this silence, there is no reason to presume that the Commission intended to depart from the  
15 provisions of the electric competition rules. Those rules classify "standard offer service" as a non-  
16 competitive service and provide that standard offer rates "shall reflect the costs of providing the  
17 service." AAC R14-2-1601(30), -1606(c)(4). Accordingly, Staff does not agree with TEP's  
18 description of the 1999 Settlement Agreement's "foundational premise."

19 Even if TEP's description of the settlement agreement's "foundational premise" were  
20 undisputed, which it is not, it has been erased by Decision No. 65154, commonly referred to as the  
21 Track A order. In that order, the Commission specifically prohibited TEP from transferring its  
22 generation assets. The Commission took this action to prevent ratepayers from being subjected to the  
23 volatility of the wholesale market. There is no reason to believe that the Commission would prohibit  
24 TEP from transferring its generation assets but at the same time allow TEP to charge its customers  
25 market rates for that generation, as the latter action would cancel the protections inherent in the first.  
26 In summary, the question of how TEP's rates will be set post 2008 has been answered: Track A  
27 contemplates that TEP will retain its generation assets and that those assets will be dedicated to  
28 serving its customers on a traditional cost-of-service basis. See Decision No. 65154 at 22-25.

1 TEP's assertions in its Motion appear to be inconsistent with both the Track A order and the  
2 1999 Settlement Agreement. Accordingly, there is no basis for the Commission to award TEP the  
3 relief that it seeks.

4 **II. IF THE COMMISSION CHOOSES TO ENTERTAIN TEP'S ACTION FOR**  
5 **DECLARATORY ORDER, TEP SHOULD BE REQUIRED TO FILE TESTIMONY**  
6 **TO EXPLAIN AND SUPPORT ITS ALLEGATIONS.**

7 Many Commission proceedings commonly require prefiled testimony, especially when those  
8 proceedings implicate substantial issues. Given the scope of the inquiry suggested by TEP's Motion,  
9 TEP should be required to file prefiled testimony that describes the specific factual basis of its  
10 allegations, identifies the specific relief that it requests, and explains why its requested relief is  
11 justified by its factual allegations. Staff believes that TEP's Motion lacks this degree of specificity.

12 For example, TEP's May 4, 2005 pleading does not explain why TEP has concluded that its  
13 current rates are market-based. This allegation appears to directly contradict TEP's 1999 Settlement  
14 Agreement, which states that the Market Generation Methodology is related to the recovery of  
15 stranded costs. (Settlement Agreement at 4-5). By definition, allowing stranded cost recovery is an  
16 indication of cost-based ratemaking. If TEP now contends that its current rates were not intended to  
17 incorporate recovery of stranded costs, contrary to the express terms of its 1999 settlement  
18 agreement, some testimony that specifically explains the basis for TEP's conclusion would be  
19 helpful.

20 TEP further alleges that a Commission denial of its Motion will have "immediate  
21 consequences" for the 1999 Settlement Agreement, the 2004 Rate Review, and any future TEP rate  
22 cases. (TEP's Mot. Dec. Ord. at 3). This sweeping conclusion is not further elucidated, except for  
23 TEP's cryptic assurance that, if the Commission were to apply "some other rate methodology" to  
24 TEP's generation, then TEP will amend its 2004 filing, will propose adjustments to its amortization  
25 rates and schedules in future rate cases, and will seek to revise its 1999 Settlement Agreement.  
26 (TEP's Mot. Dec. Ord. at 5). These allegations do not contain enough information to allow a  
27 thorough analysis of TEP's Motion, even if one could identify with certainty the specific factual or  
28 legal theory that TEP intends to advance.

In summary, TEP's Motion appears to merely identify potential issues without setting forth

1 the underlying factual basis and/or legal analysis that might support its requested relief. In these  
2 circumstances, the Commission should require TEP to file prefiled testimony if the Commission  
3 wishes to entertain TEP's Motion.

4 **III. TEP'S MAY 4<sup>th</sup> MOTION WARRANTS AN EXTENSION OF THE PROCEDURAL**  
5 **DEADLINES GOVERNING ITS PENDING RATE CASE.**

6 A.A.C. R14-2-103(B)(11)(e) provides that the Commission may extend the time periods  
7 prescribed by the rate case processing rules in either of two circumstances: 1) the filing of any  
8 amendment that changes the amount sought or alters the facts used as the basis for a rate request or 2)  
9 the occurrence of an extraordinary event. Staff believes that an extension of the time periods  
10 governing TEP's pending rate case is appropriate whether the Commission grants TEP's Motion,  
11 denies it, or orders TEP to prefile testimony.

12 In its May 4<sup>th</sup> Motion, TEP implies that it will supplement its June 1, 2004 rate case filing if the  
13 Commission does not grant the relief that it seeks. (TEP's Mot. Dec. Ord. at 5). Therefore, if the  
14 Commission denies TEP's Motion, as Staff is urging in this Response, then it appears that TEP will  
15 supplement its rate case filing. (TEP's Mot. Dec. Ord. at 5). If, on the other hand, the Commission  
16 adopts Staff's alternative request, then TEP will file testimony in support of its May 4<sup>th</sup> filing. In  
17 either case, such additional information will require additional analysis and therefore justify an  
18 extension of time pursuant to R14-2-103(B)(11)(e).

19 This situation places Staff and the other parties to this proceeding in a quandary: it appears  
20 highly likely that TEP will make some additional filing, either in the form of testimony supporting its  
21 Motion for Declaratory Order or in the form of a supplement to its pending rate case. These  
22 additional filings are likely to occur sometime in the near future, but probably not before June 13,  
23 2005, the due date for Staff and intervener testimony in the current rate case. Staff therefore finds  
24 itself in the position of having to develop and file its rate case testimony by June 13<sup>th</sup>, even though it  
25 appears highly likely that TEP will soon file information that may render that analysis moot.

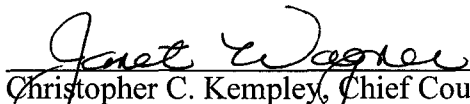
26 In these circumstances, Staff suggests that an indefinite continuance of the filing deadlines in  
27 TEP's pending rate case is warranted at least until TEP has clarified its intentions, either by filing  
28 whatever supplemental information it intends to file or by indicating that it does not intend to do so.

1 Accordingly, Staff requests that the Commission immediately and indefinitely continue the filing  
2 deadlines in TEP's current rate case at least until the Commission can convene a procedural  
3 conference to address these matters.

4 **IV. CONCLUSION.**

5 Staff requests that the Commission deny TEP's May 4<sup>th</sup> Motion, because the Commission's  
6 Track A order has already dealt with these issues. In the alternative, Staff requests that the  
7 Commission require TEP to file testimony in support of its Motion. Finally, Staff requests that the  
8 Commission immediately and indefinitely extend the rate case deadlines until TEP indicates its  
9 intentions regarding any additional filings.

10 RESPECTFULLY SUBMITTED this 20th day of May, 2005.

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